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OFFICE OF PETITIONS

In re Application of
Miller
Application No. 10/603,525
Filed: June 25, 2003
Attorney Docket No. SMLR0002.01
FOR: CULTIVATION OF MORCHELLA

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:
: DECISION GRANTING
: PETITION
:
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This is a decision on the petition filed November 12, 2003 (certificate of mailing date November 10, 2003) requesting, in effect, withdrawal of the Notice to File Missing Part(s) of Nonprovisional Application (Notice), mailed September 10, 2003, insofar as the Notice alleges Figure 6 was omitted upon initial filing. The petition will be treated under 37 CFR 1.53(e).

The application was deposited on June 25, 2003. On September 10, 2003, the Office of Initial Patent Examination mailed a Notice informing petitioner that drawing figure 6 described in the specification appeared to have been omitted.

In response to the Notice, petitioner timely filed the present petition. Petitioner requests that drawing figure 6 be accorded a filing date of June 25, 2003 on the basis that 5 sheets of drawing figures, including drawing figure 6, were received in the Patent and Trademark Office (PTO) on June 25, 2003. In support, the petition is accompanied by a copy of applicant's itemized postcard receipt showing an Office of Initial Patent Examination generated barcode citing June 25, 2003 as the date of receipt. The postcard lists, *inter alia*, that the filing included 5 sheets of drawings.

The return postcard constitutes *prima facie* evidence that 5 sheets of drawing figures, including drawing figure 6, were filed on June 25, 2003. MPEP 503. A review of the original application papers reveals that only 4 sheets of drawings depicting Figures 1a-1c, 2a-2b, 3a-3f, 4, and 5 are present. Accordingly, the request is **GRANTED**.

The \$130.00 petition fee submitted with the instant petition will be credited to deposit account no. 02-0390.

The application is being returned to Office of Initial Patent Examination for further processing, with a filing date of **June 25, 2003**, using the copy of drawing figure 6 submitted with the instant petition. Office records will be corrected to show that 5 sheets of drawings were present on filing.

Any inquiries pertaining to this matter may be directed to the undersigned at (703) 308-6712.

E. Shirene Willis
Senior Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

UNITED STATES PATENT & TRADEMARK OFFICE
Washington, D.C. 20231

REQUEST FOR PATENT FEE REFUND											
1 Date of Request: <u>2/4/04</u>		2 Serial/Patent # <u>10/603,525</u>									
3 Please refund the following fee(s):		4 PAPER NUMBER	5 DATE FILED	6 AMOUNT							
	Filing			\$							
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<u>Postcard proves allegedly omitted drug fig was present on</u> <u>day 1. Refund pet fee</u>											
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